

Message Text

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C O N F I D E N T I A L STATE 202358

FOR MR GEISE-PLS PASS DEP ASST SECY DALLEY

FOLLOWING REPEAT SANTIAGO 6957 ACTION SECSTATE INFO ASUNCION
BRASILIA BUENOS AIRES LA PAZ LIMA MONTEVIDEO QUITO DAQED AUG 21:

QTE: C O N F I D E N T I A L SANTIAGO 6957

E.O. 11652: GDS

TAGS: SHUM PINT PGOV CI

SUBJECT: CHILE PREPARES GROUND FOR NEW EMERGENCY POWERS CATEGORY

REF: A) 76 SANTIAGO A-146, B) SANTIAGO 6818, C) SANTIAGO 2022

1. SUMMARY: THE GOC HAS BEGUN TO PAVE THE WAY FOR
LIFTING THE STATE OF SIEGE BY EXTENDING ITS PREVENTIVE
DETENTION AND SOME OTHER STATE OF SIEGE POWERS TO A
WIDER RANGE OF EMERGENCY CONDITIONS. END SUMMARY.

2. BACKGROUND. PROVISION FOR EMERGENCY POWER RULE
BY THE CHILEAN EXECUTIVE DATES BACK TO INDEPENDENCE.
LAW 12,927 OF 1958 DEFINES SOME CATEGORIES OF EMERGENCY
RULE AND SOME OF THE EXCEPTIONAL POWERS WHICH CAN BE
GRANTED THE EXECUTIVE IN EACH STAGE, BUT THE DRAFTERS
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DID NOT FORESEE A NEED FOR PREVENTIVE DETENTION IN
THE FACE OF LESSER EMERGENCIES THAN STATE OF WAR OR
SIEGE. CONSTITUTIONAL ACT 4 OF 1976 (SEE REF A)
BROADLY REDEFINED CATEGORIES OF NATIONAL EMERGENCY:
ITS MAJOR INNOVATION WAS THE CONCEPT OF A NATIONAL
CRISIS IN THE FACE OF LATENT SUBVERSION - I.E. DANGER
TO THE STATE NOT INVOLVING INSURRECTION. IMPLEMENTING

REGULATIONS WERE TO FOLLOW IN SIX MONTHS. AS REPORTED
REF C, THE GOC MISSED THIS DEADLINE AND, IN MARCH,
GAVE ITSELF ANOTHER SIX MONTHS. THE DEADLINE IS NOW
MID-SEPTEMBER.

3. PRESIDENT PINOCHET IS EXPECTED TO ANNOUNCE THE
END OF THE STATE OF SIEGE DURING HIS SEPTEMBER 11
COUP ANNIVERSARY ADDRESS TO THE NATION. INDICATIONS
ARE THAT HE WILL REPLACE IT WITH THE NEW EMERGENCY
CONDITION "STATE OF DEFENSE AGAINST SUBVERSION".

4. DECREE LAW 1877. DECREE LAW (DL) 1877 OF AUGUST
12, PUBLISHED SIMULTANEOUSLY WITH THE DL'S ABOLISHING
DINA AND CREATING THE NEW NATIONAL INFORMATION CENTER --
CNI (REF B), BEGINS THE PROCESS OF MAKING POWERS HERE-
TOFORE IN EFFECT ONLY FOR STATES OF SIEGE OR WAR
OPERATIVE DURING ANY "STATE OF EMERGENCY". ARTICLE
ONE OF THE NEW DECREE AUTHORIZES THE PRESIDENT TO
DETAIN PEOPLE FOR UP TO FIVE DAYS IN THEIR OWN HOMES
OR IN PLACES WHICH ARE NOT COMMON JAILS DURING ANY
PERIOD OF EMERGENCY. ARTICLE TWO OF DL 1877 SAYS
THAT "REFERENCES TO STATE OF SIEGE IN DL'S 81 AND
198 AND ARTICLE ONE OF DL 1009 ARE DECLARED TO BE
UNDERSTOOD TO BE APPLICABLE DURING THE STATE OF
EMERGENCY REGULATED BY LAW 12,927 OF 1958".

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5. THUS, UNDER THE REDUCED STATE OF EMERGENCY
PRESUMABLY THE GOC COULD STILL:

-- EXPEL FOREIGNERS AND CITIZENS FOR NATIONAL
SECURITY REASONS. (ARTICLE TWO OF DL 81);

-- REQUIRE PRIOR APPROVAL FOR LABOR UNION MEETINGS
WHICH, EVEN IF APPROVED, CAN ONLY BE OF AN "INFORMA-
TIONAL CHARACTER" OR DEAL WITH ADMINISTRATIVE MATTERS--
THUS EXCLUDING ELECTIONS OR SUBSTANTIVE DIALOGUE BE-
TWEEN UNION LEADERS AND RANK AND FILE. (TRANSITORY
ARTICLE FOUR OF DL 198);

-- USE "SPECIALIZED AGENCIES WATCHING OVER THE NORMAL
UNFOLDING OF NATIONAL ACTIVITY AND MAINTENANCE OF
THE CONSTITUTED ORDER" TO MAKE PREVENTIVE DETENTIONS
"IN THE EXERCISE OF THEIR OWN POWERS" FOR UP TO FIVE
DAYS (EXTENDED TO 10 DAYS BY CONSTITUTIONAL ACT 4),
BUT WITH THE REQUIREMENT THAT FAMILIES BE NOTIFIED
WITHIN 48 HOURS. (ARTICLE ONE OF DL 1009). (COMMENT:
THE DL 1009 REFERENCE TO "SPECIALIZED AGENCIES"
PARA 4) BEARS CLOSE WATCHING. THE DECREE LAW

CREATING CNI (REF B) CONTAINS VERY SIMILAR LANGUAGE. WHEN WE POINTED OUT THIS COINCIDENCE TO A GOC LEGAL EXPERT, HE REPLIED THAT CNI HAS NO AUTHORITY TO DETAIN "IN THE EXERCISE OF ITS OWN POWERS." AS NOTED IN REF B, HOWEVER, CNI CAN DETAIN ON AUTHORITY OF A MILITARY JUDGE'S WARRANT IN CASES OF SUSPECTED ARMS CONTROL VIOLATIONS OR SUSPECTED PARTICIPATION IN EFFORTS TO VIOLENTLY OVERTHROW THE GOVERNMENT.

6. COMMENT: DL 1877 BEGINS THE PROCESS OF SPELL-ING OUT THE POWERS THE GOC CAN DRAW UPON WHEN IT MOVES TO LESSER LEVELS OF EMERGENCY POWER. THE FIRST IMPRESSION IS THAT THE GOC INTENDS TO RETAIN THE MORE IMPORTANT PARTS OF ITS STATE OF SIEGE
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AUTHORITY. WE EXPECT FURTHER ENLIGHTENMENT FROM THE REGULATIONS TO BE ISSUED BY MID-SEPTEMBER.

7. THERE MAY BE A BRIGHTER SIDE TO DL 1877 AND THE PROSPECTIVE IMPLEMENTING REGULATIONS FOR A REDUCED STATE OF EMERGENCY POWERS. AS THINGS NOW STAND, STATE OF SIEGE POWER, BECAUSE OF ITS LONG TRADITION, IS SO DEEPLY AND WIDELY IMBEDDED IN NATIONAL JURISPRUDENCE THAT IT IS DIFFICULT EVEN FOR CHILEAN LAWYERS TO DETERMINE THE FULL SCOPE OF THE GOC'S CURRENT AUTHORITY - AND THUS IT IS DIFFICULT TO PROVE THAT THE GOC IS NOT FOLLOWING ITS OWN LAWS. THE COMBINATION OF A REDUCED STATE OF EMERGENCY POWER WITH CLEARLY DEFINED ATTRIBUTES COULD FACILITATE LEGAL DEFENSE AND JUDICIAL PROCEDURES. BOYATT UNQTE CHRISTOPHER

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